

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Brian L. Jones, #12854-171,

Petitioner,

v.

Warden, FCI Butner Low,

Respondent.

C/A No. 3:08-2164-GRA

ORDER

(Written Opinion)

This matter is before the Court for review of the magistrate's Report and Recommendation made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(c), D.S.C., filed August 4, 2008. Petitioner brings this suit pursuant to 28 U.S.C. § 2241. The magistrate recommends that the case be transferred to the United States District Court for the Eastern District of North Carolina. For the following reasons, the Court accepts the recommendation of the magistrate.

Petitioner brings this motion *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir.), *cert. denied*, 439 U.S. 970 (1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *Cruz v. Beto*, 405 U.S. 319 (1972).

The magistrate makes only a recommendation to this Court. The

recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Matthews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the Court may accept, reject or modify, in whole or in part, the recommendation of the magistrate, or recommit the matter to him with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th. Cir. 1983). Petitioner did not file specific objections to the Report and Recommendation. On August 14, 2008, Petitioner wrote a letter stating that he would like the case to remain in this Court. However, the Court is unable to retain jurisdiction over this matter.

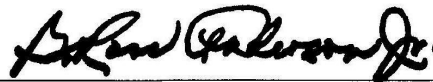
The petitioner asks that he be given his time served credits as promised by the Bureau of Prisons. The United States has been improperly named the defendant in the petitioner's §1983 action. The proper defendant is the prison warden of FCI Butner Low, a resident of North Carolina. This court is without *in personam* jurisdiction over the warden. In addition, since this is a 28 U.S.C. section 2241 petition attacking the application of time served credits, the habeas petition should have been filed in the district where the petitioner is confined, the United States District Court Eastern District of North Carolina. *See In Re Jones*, 226 F.3d 328 (4th Cir 2000).

After a review of the magistrate's Report and Recommendation, this Court finds the report is based upon the proper law. Accordingly, the Report and Recommendation is accepted and adopted in its entirety.

IT IS THEREFORE ORDERED that this action be transferred to the United States District Court for the Eastern District of North Carolina.

IT IS FURTHER ORDERED that the United States be summarily dismissed as the respondent and the Warden of FCI Butner Lowe be substituted as respondent.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina

September 10, 2008

NOTICE OF RIGHT TO APPEAL

Petitioner has the right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, will waive the right to appeal.